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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/300,510 09/02/94 GEFTER

M 092.00S

EXAMINER  
CUNNINGHAM, T

18N1/0311

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ART UNIT PAPER NUMBER

1816  
DATE MAILED:

03/11/96

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**

# Office Action Summary

Application No.

08/300,510

Applicant(s)

Gefter et al.

Examiner

Thomas M. Cunningham

Group Art Unit

1816

☒ Responsive to communication(s) filed on 12/12/95

☐ This action is **FINAL**.

☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

A shortened statutory period for response to this action is set to expire 1 month(s), or thirty days, whichever is longer, from the mailing date of this communication. Failure to respond within the period for response will cause the application to become abandoned. (35 U.S.C. § 133). Extensions of time may be obtained under the provisions of 37 CFR 1.136(a).

## Disposition of Claims

☒ Claim(s) 44-102 is/are pending in the application.

Of the above, claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

☐ Claim(s) \_\_\_\_\_ is/are allowed.

☐ Claim(s) \_\_\_\_\_ is/are rejected.

☐ Claim(s) \_\_\_\_\_ is/are objected to.

☒ Claims 44-102 are subject to restriction or election requirement.

## Application Papers

☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.

☐ The drawing(s) filed on \_\_\_\_\_ is/are objected to by the Examiner.

☐ The proposed drawing correction, filed on \_\_\_\_\_ is ☐ approved ☐ disapproved.

☐ The specification is objected to by the Examiner.

☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. § 119

☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).

☐ All ☐ Some\* ☐ None of the CERTIFIED copies of the priority documents have been  
☐ received.

☐ received in Application No. (Series Code/Serial Number) \_\_\_\_\_.

☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\*Certified copies not received: \_\_\_\_\_

☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

## Attachment(s)

☐ Notice of References Cited, PTO-892

☒ Information Disclosure Statement(s), PTO-1449, Paper No(s). \_\_\_\_\_

☐ Interview Summary, PTO-413

☐ Notice of Draftsperson's Patent Drawing Review, PTO-948

☐ Notice of Informal Patent Application, PTO-152

--- SEE OFFICE ACTION ON THE FOLLOWING PAGES ---

1. Due to the breadth of the instant claim language as well as to the numerous claim limitations an election of species is required in order to permit effective examination of the claimed subject matter.

2. Claims 44-102 are generic to a plurality of disclosed patentably distinct species comprising materially different therapeutic compositions and methods of treatment comprising materially distinct compositions and method steps.

For instance, composition claims 45-78 comprise structurally and functionally distinct peptides, see e.g. claims 71-74 which claim distinct peptide allergens and claims 47-48 which claim peptides with distinct lengths. See also, method claim 81 which claims different modes of administration which would be expected to induce materially different immune responses, and claims 86-93 which describe method steps which would be expected to result in distinct immune responses.

Applicant is required under 35 U.S.C. § 121 to elect a single disclosed species, even though this requirement is traversed.

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the

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inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. § 103 of the other invention.

Applicant is required (1) to elect a therapeutic composition comprising a single distinct species of peptide, such as one of those enumerated in claims 71-74 and elect a peptide with a specific peptide length.

(2) An election of a method based upon the use of the above elected therapeutic composition is required. (3) An election of the route, dosage and mode (timing) of administration of the elected therapeutic composition is also required.

Alternatively, the Applicant may admit on the record that the structural identity of the particular peptide containing a T cell epitope as well as its length is non-critical (i.e. that all such species are obvious over one another), in which case parts (1) and (2) of the election requirement will be withdrawn.

The Applicant may also admit on the record that the different routes (oral, subcutaneous, etc.), dosages, and modes (timings) of administration of the therapeutic composition are obvious over one another and part (3) of the election requirement will be dropped.

3. Papers related to this application may be submitted to Group 1800 by facsimile transmission. The faxing of such papers must conform with the notice published in the Official Gazette, 1096

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OG 30 (November 15, 1989). Papers should be faxed to Thomas Cunningham, Art Unit 1816 and should be marked either "OFFICIAL" for entry into the prosecution history or "DRAFT" for consideration by the Examiner without entry. The Art Unit 1816 FAX telephone number is (703) 305-7939. FAX machines will be available to receive transmissions 24 hours a day.

In compliance with 1096 OG 30 the filing date accorded to each OFFICIAL fax transmission will be determined by the FAX machine's stamped date found on the last page of the transmission, unless that date is a Saturday, Sunday or federal holiday with the District of Columbia, in which case the official date of receipt will be the next business day.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Thomas M. Cunningham, Ph.D, J.D. whose telephone number is (703) 308-3968. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

*TMC*  
THOMAS M. CUNNINGHAM  
PATENT EXAMINER  
GROUP 180